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# NATIONAL ORIGIN DISCRIMINATION IN EMPLOYMENT IS UNLAWFUL

The Rights of Employees
And Job Applicants
Under Title VII of
The Civil Rights Act of 1964
And The 1986 Immigration Act

The U.S. Equal Employment Opportunity Commission
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The Immigration Reform and Control Act of 1986, or IRCA, makes it unlawful for employers to hire unauthorized aliens after Nov. 6, 1986. An unauthorized alien is a person who is not a U.S. citizen or national or who is not authorized to work in the U.S.

IRCA requires employers to confirm that all employees hired after Nov. 6, 1986, are U.S. citizens, U.S. nationals or aliens authorized to work in the U.S. Employers must:

- Check documents establishing your identity and eligibility to work;
- Ask you to fill out part of Form I–9 when you begin work;
- Complete Form I–9 and keep it for at least three years;
- Allow government officials to inspect your Form I–9 upon request.

IRCA does not require employers to fire unauthorized aliens hired before November 6, 1986. However, such persons remain subject to deportation by the Immigration and Naturalization Service (INS) if they remain unauthorized to stay in the U.S.

As an employee, you will need to show your employer documents that establish your identity and employment eligibility. Some documents do both. These include U.S. passports and certificates of U.S. Citizenship (INS Form N–560 or N–561). If you do not provide one of these, you must provide one document to prove identity and one to prove employment eligibility. Identity documents include a state-issued driver's license or identification card or one of the other documents approved by the Immigration and Naturalization Service. Employment eligibility documents include social security cards, U.S. birth certificates or one of the other documents approved by INS. To find out more about acceptable documents, contact your local INS office.

IRCA prohibits national origin and citizenship status discrimination in hiring, discharge, and paid recruitment and referrals for employment. IRCA's antidiscrimination provisions apply to U.S. citizens, U.S. nationals and intending citizens.'' In order to be considered an ''intending citizen'' a temporary or permanent resident alien or refugee or alien granted asylum must have completed a ''Declaration of Intention'' or ''Declaration of Intending Citizen'' form available from the INS, or OSC, prior to filing a discrimination charge, and have complied with the time-frames indicated in IRCA for pursuing naturalization.

The antidiscrimination provisions of IRCA are enforced by the Office of Special Counsel for Immigration-Related Unfair Employment Practices, U.S. Department of Justice.

Another law, Title VII of the Civil Rights Act of 1964, prohibits employment discrimination based on national origin, race, color, religion or sex. IRCA and Title VII work together, but they are not the same.

Under Title VII, no one can be denied equal employment opportunity because of his or her birth place, ancestry, culture, ethnic characteristics, participation or association with specific individuals, ethnic groups, or schools or churches generally associated with a national origin group. Employers cannot discriminate in hiring, discharge, recruitment, promotion, pay and fringe benefits, job assignments and other conditions of employment. Retaliation for exercising your rights under Title VII or IRCA is unlawful. Title VII does not distinguish between authorized and unauthorized aliens; therefore, Title VII protects unauthorized aliens.

Title VII is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), which has field offices located in cities throughout the United States.

Some state and local governments have other laws that prohibit national origin employment discrimination. Also, the Civil Rights Act of 1866 protects persons from national origin discrimination.

## EMPLOYERS CANNOT DISCRIMINATE IN:

| TITLE VII | IRCA |
|---|---|
| • hiring<br>• discharge<br>• recruitment<br>• promotion<br>• pay and fringe benefits<br>• job assignments<br>• other terms, conditions and privileges of employment | • hiring<br>• discharge<br>• recruitment or referral for a fee |
| • It is unlawful for employers to retaliate against you for asserting your rights under Title VII. | • It is unlawful for employers to retaliate against you for asserting your rights under IRCA. |

## WHICH EMPLOYERS ARE PROHIBITED FROM DISCRIMINATING?

| TITLE VII | IRCA |
|---|---|
| Employers with 15 or more employees for 20 or more weeks a year<br><br>Employment agencies which recruit and refer employees<br><br>Labor unions | Employers, including unions and agencies which recruit and refer employees for a fee, with 4 to 14 employees or employers otherwise not covered by Title VII.<br><br>Citizenship status antidiscrimination provisions cover employers with 4 or more employees. |

## WHO IS PROTECTED?

| TITLE VII | IRCA |
|---|---|
| All employees and job applicants of covered employers | The national origin antidiscrimination provisions protect all employees and job applicants of employers of 4 to 14 workers, if they are a:<br>• U.S. citizen,<br>• U.S. national or<br>• alien authorized to work in the U.S.<br><br>The citizenship status antidiscrimination provisions protect all employees or job applicants of employers of 4 or more, if they are a:<br>• U.S. citizen or<br>• U.S. national or<br>• an intending citizen. |

## CAN AN EMPLOYER PREFER A U.S. CITIZEN OVER A NONCITIZEN?

| TITLE VII | IRCA |
|---|---|
| Title VII does not specifically cover discrimination based on citizenship, but prohibits citizenship preferences having the purpose or effect of discriminating on the basis of national origin. The employer's preference for citizens or nationals allowed by IRCA may violate Title VII if it results in discrimination on the basis of national origin. | Employers are permitted to hire, recruit or refer for employment a citizen or national over a particular alien for a particular job if both persons are equally qualified. Otherwise, discrimination against noncitizens, is prohibited unless citizenship is otherwise lawfully required. |

## EXAMPLES OF DISCRIMINATION THAT VIOLATE IRCA:

- refusing to hire a U.S. citizen, U.S. national or authorized alien because he or she was born in another country or appears to be foreign or has a foreign name or accent
- asking only those who look or sound foreign or who are of a particular national origin for documents showing proof of their identity and work authorization
- refusing to hire an alien who is authorized to work and intending to become a citizen simply because he or she is not yet a U.S. citizen

## EXAMPLES OF DISCRIMINATION THAT VIOLATE TITLE VII:

- refusing to hire a person because of his or her homeland or because he or she looks, sounds or acts foreign
- asking only those who look or sound foreign or who are of a particular national origin for documents showing proof of their identity or work authorization
- denying employment or a promotion because of a person's accent or manner of speaking when it does not interfere with successful job performance
- maintaining height and weight requirements which are not necessary to successfully perform the job
- transferring, laying off, firing or assigning a person more difficult tasks because of his or her national origin
- maintaining a citizenship requirement which disproportionately disqualifies persons on the basis of national origin and is not reasonably necessary to conduct business

## WHO MAY FILE A CHARGE OF EMPLOYMENT DISCRIMINATION?

| TITLE VII | IRCA |
| --- | --- |
| • The person discriminated against or someone acting on his or her behalf<br>• An EEOC Commissioner | • The person discriminated against or someone acting on his or her behalf<br>• An officer of the Immigration and Naturalization Service of the Department of Justice |

## WHAT ARE THE TIME LIMITS FOR FILING A CHARGE OF DISCRIMINATION?

| TITLE VII | IRCA |
| --- | --- |
| • Within 180 days of the alleged discrimination<br>• In some cases, you may have up to 300 days to file a charge of discrimination, but in order to protect your rights, it is best to contact EEOC promptly if discrimination is suspected. | • Within 180 days of the alleged discrimination |

## WHERE DO I FILE A CHARGE OF DISCRIMINATION?

| TITLE VII | IRCA |
| --- | --- |
| At any EEOC field office, located in cities throughout the U.S.<br><br>At any state or local fair employment agency | Mail to: Office of Special Counsel for Immigration-Related Unfair Employment Practices P.O. Box 65490 Washington, D.C. 20035-5490<br><br>or<br><br>Deliver to: Office of Special Counsel 1100 Connecticut Ave., N.W. Suite 800 Washington, D.C. 20036 |

## HOW DO I FILE A CHARGE OF DISCRIMINATION?

| TITLE VII | IRCA |
| --- | --- |
| You fill out an EEOC charge form. The form asks for the employer's name, address and telephone number, the date the alleged discrimination occurred and the nature of the discrimination. If you visit an EEOC office, an EEOC investigator will interview you and assist you in filling out the charge form. | You fill out a charge form provided by the Office of Special Counsel. The form asks for the employer's name, address and telephone number, the date the alleged discrimination occurred and the nature of the discrimination. You also will be asked questions about your citizenship status and eligibility to work in the U.S. |

## CAN I FILE THE SAME DISCRIMINATION CHARGE WITH BOTH EEOC AND OFFICE OF SPECIAL COUNSEL?

No. If you have filed a charge with EEOC under Title VII, you cannot file a charge of national origin discrimination under IRCA if that charge is based on the same facts. Only if EEOC finds that your charge is *not* covered by Title VII may you then file under IRCA.

Similarly, you cannot first file a charge under IRCA and later file the same charge under Title VII unless the Office of Special Counsel has dismissed the charge as not covered by IRCA.

If you have questions about which agency to file a charge with, contact either EEOC or the Office of Special Counsel.

## CAN MY EMPLOYER TAKE ACTION AGAINST ME FOR FILING A CHARGE?

| TITLE VII | IRCA |
|---|---|
| No. Title VII prohibits retaliation against a person who files a charge, participates in or cooperates with an investigation. | No. IRCA prohibits retaliation against a person who files a charge, participates in or cooperates with an investigation. |
| If you feel you are being retaliated against, contact EEOC promptly. | If you feel you are being retaliated against, contact the Office of Special Counsel immediately. |

## WHAT REMEDIES ARE AVAILABLE?

| TITLE VII | IRCA |
|---|---|
| • hiring<br>• back pay<br>• promotion<br>• reinstatement<br>• reassignment<br>• attorney's fees<br>• other steps to put you in the position you would have had but for the discrimination | • an order to cease and desist from the discriminatory practice<br>• an order to comply with the employment verification system<br>• hiring<br>• back pay<br>• reinstatement<br>• $1,000 penalty for each person discriminated against, or up to $2,000 for each person if the employer was previously fined<br>• attorney's fees in some cases |

For more information on Title VII of the Civil Rights Act of 1964, or to file a charge of employment discrimination with the U.S. Equal Employment Opportunity Commission, call toll free 1-800-USA-EEOC, or look in your telephone directory under U.S. Government for the nearest EEOC office. The telephone number for hearing-impaired persons is (202) 663-4399. The text of Title VII is contained in the booklet "Laws Enforced by EEOC" and may be obtained by writing to the Office of Communications and Legislative Affairs, EEOC, Washington, D.C. 20507.

For more information on the Immigration Reform and Control Act, call the Office of Special Counsel toll free at 1-800-255-7688. The telephone numbers for hearing-impaired persons are 1-800-237-2515 or (202) 296-0168 (in the Washington D.C. area). For 24-hour-a-day recorded information, call 1-800-777-7700. You may write to the Office of Special Counsel for Immigration-Related Unfair Employment Practices, P.O. Box 65490, Washington, D.C. 20035-5490.

The information contained in this booklet is intended as a general overview and does not carry the force of a legal opinion.

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